

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530

Plaintiff,

v.

ALLIED WASTE INDUSTRIES, INC.
15880 Greenway-Hayden Loop, Suite 100
Scottsdale, Arizona 85260

SUPERIOR SERVICES, INC.
One Honey Creek Corporate Center
125 South 84th Street, Suite 200
Milwaukee, Wisconsin 53214,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the acquisition of certain waste-hauling and disposal assets by defendants Allied Waste Industries, Inc. (“Allied”) and Superior Services, Inc. (“Superior”) and to obtain equitable and other relief as is appropriate. Plaintiff complains and alleges as follows:

1. On August 4, 1999, Allied and Superior entered into nine separate asset purchase and stock transfer agreements in which they agreed to exchange certain waste-hauling and disposal assets. Three of those nine transactions would lessen competition substantially in waste collection and disposal services: (1) Superior's acquisition of hauling assets in Milwaukee, Wisconsin; (2) Allied's acquisition of hauling assets in Mansfield, Ohio; and (3) Superior's acquisition of the County Environmental Landfill in Leeper, Pennsylvania.

2. Allied and Superior are two of only a few providers of waste collection services in the Milwaukee and Mansfield areas, and they are the only two operators of municipal solid waste disposal sites in the Leeper area. Unless the three acquisitions are enjoined, consumers of waste collection and disposal services will likely pay higher prices and receive fewer services as a consequence of the elimination of the vigorous competition between defendants Allied and Superior.

I.

JURISDICTION AND VENUE

3. This action is filed by the United States of America under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. Allied is located in and transacts business in the District of Columbia, and Superior submits to personal jurisdiction of the District of Columbia in this proceeding. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

5. Defendants Allied and Superior collect municipal solid waste from residential, commercial, and industrial customers, and they own and operate transfer stations, landfills, and

incinerators, which process and dispose of municipal solid waste. In their waste collection and waste disposal businesses, defendants make sales and purchases in interstate commerce, ship waste in the flow of interstate commerce, and engage in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

DEFINITIONS

6. "MSW" means municipal solid waste, a term of art used to describe solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and non-manufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

7. "Small container commercial waste collection service" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

8. "Transfer station" means an intermediate disposal site, often used in more densely populated urban areas, for the processing and temporary storage of solid waste before transfer, in bulk, to more distant facilities for final disposal.

9. "Milwaukee area" means the City of Milwaukee, Milwaukee County, and the

eastern half of Waukesha (east of route 83) County, Wisconsin.

10. “Mansfield area” means the City of Mansfield and Richland and Ashland counties, Ohio.

11. “Leeper area” means the City of Leeper and Clarion, Elk, Forest, and Jefferson counties, Pennsylvania.

III.

DEFENDANTS AND THE TRANSACTION

12. Allied is a Delaware corporation with its principal office in Scottsdale, Arizona. Allied is the nation’s second largest waste hauling and disposal company. It is engaged in providing waste collection and disposal services throughout the United States. In 1999, Allied reported total revenues of approximately \$6 billion.

13. Superior is a Wisconsin corporation with its principal office in Milwaukee, Wisconsin. Superior is engaged in providing waste collection and disposal services throughout the United States. In its 1998 fiscal year, Superior reported total revenues of approximately \$319.7 million.

14. On August 4, 1999, in nine separate purchase agreements, defendants agreed to exchange assets and transfer stock ownership of various subsidiary companies (“the acquisitions”). Pursuant to five of the agreements, Allied would acquire from Superior: (1) hauling assets in Columbus, Ohio, hauling and transfer station assets in Mansfield, Ohio, disposal assets in Zanesville, Ohio, and hauling assets in Uniontown, Pennsylvania; (2) the Noble Road Landfill in Richland County, Ohio; (3) the Oakland Marsh Landfill in Uniontown, Pennsylvania; (4) hauling assets in Columbia, Missouri; and (5) the Sycamore Landfill in Hurricane, West Virginia. In exchange, pursuant to four other agreements, Superior would

acquire from Allied: (1) hauling assets in Milwaukee, Wisconsin; (2) the County Environmental Landfill in Leeper, Pennsylvania; (3) hauling assets in Decatur, Illinois, and (4) hauling and disposal assets in Evansville, Indiana.

IV.

TRADE AND COMMERCE

A. The Relevant Service Markets

Small Container Commercial Waste Collection Service

15. Waste collection firms, or “haulers,” collect MSW from residential, commercial and industrial establishments and transport the waste to a disposal site, such as a transfer station, sanitary landfill or incinerator, for processing and disposal. Private waste haulers typically contract directly with customers for the collection of waste generated by commercial accounts. MSW generated by residential customers, on the other hand, is often collected by either local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

16. Small container commercial waste collection differs in many important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, haulers provide commercial customers with dumpsters for storing the waste. Haulers organize their commercial accounts into routes and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for commercial waste collection -- primarily front-end loader (“FEL”) trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end loader (“REL”) trucks, especially in those areas in which a collection route includes narrow alleyways or streets.

17. On a typical small container commercial waste collection route, an operator drives a FEL vehicle to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section, where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts until the vehicle is full. The operator then drives the FEL truck to a disposal facility, such as a transfer station, landfill or incinerator, and empties the contents of the vehicle.

18. In contrast to a commercial route, a residential waste collection route is significantly more labor intensive. The customer's MSW is stored in much smaller containers (*e.g.*, garbage bags or trash cans) and instead of FEL trucks, waste collection firms routinely use REL or side-load trucks, manned by larger crews (usually, two- or three-person teams). On residential routes, the crews generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in the collection process, residential customers and commercial customers usually are organized into separate routes. For a variety of reasons, other types of collection activities, such as roll-off containers (typically used for construction debris) and collection of liquid or hazardous waste, are also rarely combined with commercial waste collection activities.

19. The differences in the types and volume of MSW collected and in equipment used in collection distinguish small container commercial waste collection from all other types of waste collection activities. These differences mean that small container commercial waste collection firms can profitably increase their charges for small container commercial waste collection services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial waste collection service is a

line of commerce, or relevant service, for purposes of analyzing the effects of the acquisitions under Section 7 of the Clayton Act.

Disposal of MSW

20. MSW has physical characteristics that readily distinguish it from other liquid or solid waste. Federal, state and local safety, environmental, zoning, and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. An MSW disposal facility must be located on approved types of land and operated under prescribed procedures. For instance, in Pennsylvania, most MSW is disposed of in landfills, which are permitted and regulated by the state. Permit restrictions often impose severe limitations on the type and amount of waste that can be disposed of at landfills. Anyone who fails to dispose of MSW in an approved facility can be subject to severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers of MSW without losing significant sales to any other firms.

21. For these reasons, there are no good substitutes for the disposal of MSW. Disposal of MSW is a line of commerce, or relevant service market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Markets

Small Container Commercial Waste Collection Service in the Milwaukee and Mansfield Areas

22. Small container commercial waste collection services are generally provided in highly localized areas because to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations; *i.e.*, a large number of commercial accounts that are reasonably close together. In addition, a FEL or REL vehicle cannot be efficiently driven

long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial waste collection firm to serve metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

23. Local small container commercial waste collection firms in the Milwaukee and Mansfield areas can profitably increase charges to local customers without losing significant sales to more distant competitors. Each of these areas is a section of the country, or relevant geographic market, for the purpose of analyzing the effects of the acquisitions under Section 7 of the Clayton Act.

Disposal of MSW in the Leeper Area

24. MSW is generally transported by collection trucks to landfills and transfer stations, and the availability of disposal sites close to a hauler's routes is a major element that determines a hauler's competitiveness and profitability. The cost of transporting waste to a disposal site is a substantial component of the cost of disposal. Although, where available, MSW can be transported to distant landfills through transfer stations using large transfer trailer trucks, the use of transfer stations adds additional fixed transportation and processing costs. The cost advantage of local landfills limits the areas where MSW can be economically transported and disposed of by haulers and creates localized markets for MSW disposal services.

25. Due to the high costs of transporting MSW, and the substantial travel time to other disposal facilities based on distance, natural barriers, and congested roadways, haulers of MSW from the Leeper area are limited to landfills located in the Leeper area. Virtually all of the MSW generated in the Leeper area is disposed of exclusively in landfills in the Leeper area. In addition, operators of landfills in the Leeper area price discriminate--in other words, they charge higher

prices to haulers of MSW generated in the Leeper area than they charge to haulers outside of the Leeper area where more disposal facilities are available. In the event of a small but significant increase in the price of the disposal of MSW by landfills in the Leeper area, haulers of MSW generated in the Leeper area would not turn to disposal facilities outside the Leeper area.

26. Firms that compete in the disposal of MSW generated in the Leeper area can profitably increase their charges for disposal of MSW generated in the Leeper area without losing significant sales to more distant disposal sites. The Leeper area is therefore a section of the country, or relevant geographic market, for assessing the competitive effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition As a Consequence of the Merger

27. Allied and Superior directly compete in small container commercial waste collection service in a number of markets nationwide, including the Milwaukee and Mansfield areas. In these two markets, Allied and Superior each account for a substantial share of total revenues from commercial waste collection services.

28. Allied and Superior directly compete in the disposal of waste in a number of markets nationwide and compete in the disposal of MSW in the Leeper area. In the Leeper market, Allied and Superior each account for a substantial share of MSW capacity through Allied's County Environmental Landfill in Clarion County and Superior's Greentree Landfill in Elk County.

Milwaukee Area

29. In the Milwaukee area, the acquisition would reduce from three to two the number of significant firms competing in small container commercial collection waste collection service. After the acquisition, Superior would control roughly 40 percent--and two firms would

control over 80 percent -- of total market revenue, which is about \$22 million annually. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the post-merger HHI would be about 4700, an increase of over 700 points.

Mansfield Area

30. In the Mansfield area, the proposed acquisition would reduce from two to one the number of significant firms that compete in small container commercial waste collection service. After the acquisition, Allied would control over 80 percent of the market. The post-merger HHI would be approximately 7300, with an increase of well over 3000 points, in a market in which total revenues exceed \$3.5 million annually.

Leeper Area

31. In the Leeper area, Superior's acquisition of Allied's County Environmental Landfill would reduce from two to one the number of significant firms competing in the disposal of MSW, resulting in a monopoly. During 1998, the two landfills operated by Superior and Allied disposed of about 97% of the MSW generated in the Leeper area. Based on quantity disposed, the post-merger HHI's for disposal of MSW would be about 9500, with an increase of approximately 4500 points.

D. Entry Into Commercial Waste Collection of MSW

32. Significant new entry into small container commercial waste collection service is difficult and time-consuming in the Milwaukee and Mansfield areas. A new entrant into small container commercial waste collection service cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and

operating efficiencies comparable to existing firms. In order to obtain comparable operating efficiency, a new firm must achieve route density comparable to existing firms. The incumbents' use of price discrimination and long-term contracts, however, prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time or at pre-entry prices to constrain the post-merger firm from significantly raising prices after the transaction.

E. Entry Into Disposal of MSW

33. Significant new entry into the disposal of MSW in the Leeper area would be difficult and time-consuming. Obtaining a permit to construct a new landfill or to expand an existing landfill is a costly and time-consuming process, which typically takes many years to conclude. Local public opposition often makes it more difficult and costly, and increases the time and uncertainty of successfully permitting a facility. MSW landfills can only accept waste up to their permitted daily capacity and have a finite life span. Suitable landfills are difficult and time-consuming to obtain, and sometimes difficult to expand, because of the scarcity of suitable land, local resident opposition, environmental concerns, and government regulation. In the Leeper area, entry by any new MSW disposal facility would be an extremely costly and time-consuming process, and unlikely to prevent market incumbents from significantly raising prices for the disposal of MSW following the acquisition.

F. Harm to Competition

34. The acquisitions between Allied and Superior would remove a significant competitor in small container commercial waste collection service and the disposal of MSW, in already highly concentrated and difficult-to-enter markets. In each of these markets, the resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents ensure that consumers will pay

substantially higher prices for collection of small container commercial waste or the disposal of MSW.

V.

VIOLATION ALLEGED

35. On August 4, 1999, defendants entered into purchase agreements pursuant to which Superior would acquire hauling assets in the Milwaukee area; Allied would acquire hauling and disposal assets in the Mansfield area; and Superior would acquire the County Environmental Landfill in the Leeper area. The likely effect of these acquisitions is to substantially lessen competition and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

36. The transactions likely will have the following effects, among others:

- a. competition generally in small container commercial waste collection service in the Milwaukee and Mansfield area markets will be lessened substantially;
- b. actual and potential competition between Allied and Superior in small container commercial waste collection service in the Milwaukee and Mansfield area markets will be eliminated;
- c. prices charged by small container commercial waste collection firms in the Milwaukee and Mansfield area markets will likely increase;
- d. competition generally in disposal of MSW in the Leeper area market will be lessened substantially;
- e. actual and potential competition between Allied and Superior in disposal of MSW in the Leeper area market will be eliminated; and

- f. prices for disposal of MSW in the Leeper area market likely will increase.

VI.

REQUESTED RELIEF

Plaintiff requests:

1. That Allied's proposed acquisition of Superior's hauling assets in the Milwaukee area, and Superior's proposed acquisition of Allied's hauling assets in the Mansfield area and the County Environmental Landfill in the Leeper area be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;
2. That defendants be permanently enjoined from carrying out the acquisitions of those assets in the Purchase Agreements dated August 4, 1999, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to swap those assets between the defendants;
3. That plaintiff receive such other and further relief as the case requires and the Court deems proper; and
4. That plaintiff recover the costs of this action.

Dated: May 12 , 2000.

Respectfully submitted,

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.